

# NCESS Contract (Reliability 2025-27)

**[For Registered Facilities, or Facilities that will be required to register and that will receive energy payments excluding Intermittent Generating Systems]**

**Australian Energy Market Operator Limited**

and



Australian Energy Market Operator Limited  
ABN 94 072 010 327  
Level 22, 530 Collins Street  
Melbourne VIC 3000

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## Contract Details

<b>Parties</b>	<b>AEMO</b> Australian Energy Market Operator Limited (ABN 94 072 010 327) Level 22, 530 Collins Street, Melbourne VIC 3000
	<b>Service Provider</b> ##
<b>Commencement Date</b>	1 October 2025 or the date when all Conditions Precedent are satisfied or waived in accordance with <b>clause 3.3</b> (whichever is later)
<b>Duration</b>	<input type="checkbox"/> 1-year <input type="checkbox"/> 2-years
<b>End Date</b>	For a 1-year duration, 1 October 2026 (as extended by any period during which AEMO reasonably considers a Force Majeure Event applies before the Commencement Date, up to a maximum extension of 2 months)  For a 2-year duration, 1 October 2027 (as extended by any period during which AEMO reasonably considers a Force Majeure Event applies before the Commencement Date, up to a maximum extension of 2 months)
<b>Final Condition Precedent Satisfaction Date</b>	For a 1-year duration, 1 April 2026 (as extended by any period during which AEMO reasonably considers a Force Majeure Event applies before the Commencement Date, up to a maximum extension of 2 months)  For a 2-year duration, 1 October 2026 (as extended by any period during which AEMO reasonably considers a Force Majeure Event applies before the Commencement Date, up to a maximum extension of 2 months)
<b>Registered Service Equipment</b>	<b>Type</b> <input type="checkbox"/> Non-Intermittent Generating System <input type="checkbox"/> Electric Storage Resource  <b>Status</b> <input type="checkbox"/> Registered Facility <input type="checkbox"/> New Facility
<b>Service</b>	To increase <i>Injection</i> or reduce <i>Withdrawal</i> (measured in MW of response capability)
<b>Maximum Service Quantity</b>	## MW
<b>Security</b>	## (including GST) less any <i>Reserve Capacity Security</i> provided with respect to the Registered Service Equipment
<b>Force Majeure Event</b>	<input type="checkbox"/> May apply for the purposes of this Contract <input type="checkbox"/> Not applicable

<b>Address for Service</b>	<b>AEMO</b>
	Attention: Manager – WA Future System & Design Email: toby.price@aemo.com.au Cc: Attention: General Counsel Address: GPO Box 2008, Melbourne VIC 3001 Email: reception.melbourne@aemo.com.au
	<b>Service Provider</b>
	Attention: ##
	Address: ##
	Email: ##
	Cc:
	Email: ##

## Recitals

- A AEMO's functions under the *WEM Regulations* and the *WEM Rules* relevantly include:
- ensuring the *SWIS* operates in a secure and reliable manner; and
  - procuring, scheduling and dispatching *Non-Co-optimised Essential System Services* in accordance with the *WEM Rules*.
- B AEMO and the Service Provider have agreed to enter into this *NCESS Contract*.

## Operative Provisions

### 1. Interpretation

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#### 1.1. Definitions – general

- (a) Subject to **clause 1.1(b)**, capitalised terms used in this Contract are defined in **clause 1.2**.
- (b) Terms in capitalised-italics have the meaning given in the *WEM Rules* (including Appendix 12) effective as at the *New WEM Commencement Day*.

#### 1.2. Dictionary

**Authority** means any Commonwealth, State, Territory or local government or regulatory department, body, instrumentality, minister, agency or other authority, but does not include *AEMO*.

**Availability Payment** means the availability payment determined under **clause 9.2**.

**Availability Price** means the availability price specified in **Schedule 3**.

**Available** means the Registered Service Equipment is (or under this Contract is taken to be) capable of increasing *Injection* or reducing *Withdrawal* by the Maximum Service Quantity (relative to the Baseline Quantity).

**Baseline Quantity** means the quantity (calculated in **Schedule 4**) from which the Maximum Service Quantity provided in a *Dispatch Interval* is measured.

**Commencement Date** means the commencement date specified in the **Contract Details**.

**Condition Precedent** means a condition precedent specified in **Schedule 1**.

**Condition Precedent Satisfaction Date**, in relation to a Condition Precedent, means a condition precedent satisfaction date specified in **Schedule 1** (unless amended by *AEMO* under **clause 3.3**), which must be a date on or before the Final Condition Precedent Satisfaction Date.

**Connection Point** has the meaning given in the Electricity Industry (Metering) Code 2012.

**Contract Term** means the period specified in **clause 2**.

**Designated Connection Point** has the meaning given in **Schedule 3**.

**End Date** means the end date specified in the **Contract Details** (unless amended by *AEMO* under **clause 12(d)**).

**Energy Legislation** means:

- (a) the *Electricity Industry Act*, the *WEM Regulations* and the *WEM Rules*;
- (b) any other statute or legislative instrument of the Commonwealth or a State or Territory providing for the establishment, operation or administration of a market for energy or an energy system; and
- (c) any instrument or procedure made under any of the foregoing.

**Final Condition Precedent Satisfaction Date** means the final condition precedent satisfaction date specified in the **Contract Details** (unless amended by *AEMO* under **clause 12(d)**).

**Force Majeure Event** means any event or circumstance to the extent that it is not within the reasonable control of the Service Provider and reasonably prevents the Service Provider from performing its obligations under this Contract, and:

- (a) without limiting the generality of the foregoing, includes fire (other than fire caused by the Service Provider), flood or earthquake, war, terrorist threats or acts or other civil unrest, piracy, lock-outs, strikes or other labour disputes; and
- (b) excludes:
  - (i) any occurrence which results from the wrongful or negligent act or omission of the Service Provider or the failure by the Service Provider to act in a prudent and proper manner and in accordance with Good Electricity Industry Practice; and
  - (ii) financial cost alone or as the principal factor.

**Good Electricity Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances, consistent with applicable written laws and statutory instruments and applicable recognised codes, standards and guidelines.

**Insolvency Event**, in relation to a party, means the happening of any of these events:

- (a) it is (or states that it is) insolvent or under administration; or
- (b) it has a controller (as defined in the Corporations Act 2001 (Cth)) appointed, is in liquidation, in provisional liquidation, under administration, wound up or has had a receiver (or receiver and manager) appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);

- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that party, which is preparatory to or could result in any of the events detailed in **paragraphs (a), (b) or (c)**;
- (e) it is otherwise unable to pay its debts when they fall due; or
- (f) something having a substantially similar effect to the events detailed in **paragraphs (a) to (e)** happens in connection with that party under the law of any jurisdiction.

**Interval Meter Data**, in relation to each Designated Connection Point, means data from an interval meter provided by the *Metering Data Agent* for each *Trading Interval*.

**Legislation** means Acts of Parliament, regulations, rules, statutory instruments and codes, and includes any licence, order, official policy, directive, request, requirement or guideline of an Authority whether or not it has the force of law.

**Maximum NCESS Contract Amount** means the maximum Availability Payments that would be payable to the Service Provider, assuming that the Service is available during each *Dispatch Interval* in the Service Period of the Contract Term.

**Maximum Service Quantity** means the MW quantity required to be provided and measured by reference to the relevant Baseline Quantity, and specified in the **Contract Details** (as adjusted under **clause 3.7** or **clause 13.4**, if applicable).

**NCESS Payment**, in relation to a Settlement Period, has the meaning given in **clause 9.1(b)**.

**New Facility**, in relation to the Registered Service Equipment, means that the Registered Service Equipment is designated as a new *Facility* in the **Contract Details**.

**NMI** (short for "National Metering Identifier"), in relation to a Connection Point, means the identifier or code for that Connection Point.

**Operational Contact Person** means AEMO's Operational Contact Person or the Service Provider's Operational Contact Person, as applicable, as specified in **Schedule 6**.

**Registered Service Equipment** means the *Registered Facility* or *Facility* that is required to be registered under the *WEM Rules* for the purposes of this Contract.

**Representative**, in relation to a party, means any officer, employee, agent, adviser, trustee, permitted assignee, liquidator, administrator, or third-party contractor of that party or of a related body corporate (as that term is defined in the Corporations Act 2001 (Cth)) of that party.

**Security** has the meaning given in **clause 10**.

**Service** means the service specified in the **Contract Details**.

**Service Period** means the availability period for the Service determined under **clause 4.4**.

**Service Test**, in relation to the Registered Service Equipment, means a test of its ability to provide the Service for the purposes of this Contract.

**Settlement Period** means a *Trading Week*, provided that:

- (a) (unless **clause 10.4** applies with respect to the Security) the first Settlement Period commences on the Commencement Date; and
- (b) the last Settlement Period ends on the End Date.

**Unavailable** means the Registered Service Equipment is (under **clause 5.2**) or is taken to be (under **clause 8.4**) incapable of increasing *Injection* or reducing *Withdrawal*, as applicable, by the Maximum Service Quantity (relative to the Baseline Quantity).

## 1.2. Interpretation

Unless a contrary intention appears in this Contract, a reference to:

- (a) **this Contract** includes any schedules, attachments and annexures;
- (b) a document (including this Contract) includes the document as novated, varied, or replaced, and despite any change in the identity of the parties;
- (c) a clause, paragraph, schedule, or annexure is a reference to a clause, paragraph, schedule, or annexure to this Contract;
- (d) a clause is a reference to all its subclauses;
- (e) Legislation includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;
- (f) the singular includes the plural and vice versa, and a gender includes all genders;
- (g) the word “person” includes a firm, a body corporate, a partnership, joint venture, trust, an unincorporated association, any Authority and any successor entity to those persons;
- (h) the words “includes” or “including” or “such as” are not words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates or to examples of a similar kind;
- (i) a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (j) a party includes, where the context requires it, that person’s directors, officers, employees, contractors, agents and any other persons authorised by that party;
- (k) a thing (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively, and to each of them individually;
- (l) writing includes any mode of representing or reproducing words in tangible and permanently visible form;
- (m) a month is a reference to a calendar month;
- (n) a day is a reference to a period of time commencing at midnight and ending at the following midnight; and
- (o) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day.

### 1.3. Construction

- (a) Headings are inserted for convenience, and do not affect the interpretation of this Contract.
- (b) If a word or phrase is defined in this Contract, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) No rule of construction applies to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
- (d) An agreement, representation or warranty:
  - (i) in favour of two or more persons is for the benefit of them jointly and each of them severally; and
  - (ii) by two or more persons binds them jointly and each of them severally.

### 1.4. Schedules

- (a) The **Schedules** form part of this Contract.

- (b) If a **Schedule** contains any provisions that impose additional obligations to those set out in the Operative Provisions, the provisions in the Schedule apply in respect of the Service, as if the provision were an Operative Provision.

### 1.5. **WEM Rules prevail**

If there is any inconsistency between this Contract and the *WEM Rules* with respect to a party's obligation or other term of this Contract, the *WEM Rules* prevail to the extent of the inconsistency.

## 2. **Contract Term**

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### 2.1. **Commencement Date**

This Contract commences at 8.00 am on the Commencement Date.

### 2.2. **End Date**

This Contract ends at 8.00 am on the End Date (unless terminated earlier under **clause 13**).

## 3. **Condition Precedent**

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### 3.1. **Condition Precedent**

This Contract (other than this **clause 3** and **clause 1** (Interpretation), **clause 9** (Payment and settlement) [but only to the extent required for **clause 9** to give effect to **clause 10.4**], **clause 10** (Security), **clause 12** (Force Majeure Event), **clause 14** (Dispute resolution), **clause 15** (Representations and warranties) and **clause 16** (General)) has no legal effect unless and until all Conditions Precedent are satisfied or waived in accordance with **clause 3.3**.

### 3.2. **Responsibility for satisfying Conditions Precedent**

The Service Provider must:

- (a) use reasonable endeavours to satisfy each Condition Precedent as soon as practicable and, in any event, must satisfy each Condition Precedent by the Condition Precedent Satisfaction Date (unless extended by *AEMO* under **clause 3.3**);
- (b) keep *AEMO* informed regarding the status of each Condition Precedent, including by providing information in accordance with **Schedule 2** and as otherwise reasonably requested by *AEMO*; and
- (c) notify *AEMO* in writing promptly if the Service Provider reasonably considers that a Condition Precedent is unlikely to be satisfied by the Condition Precedent Satisfaction Date (unless extended by *AEMO* under **clause 3.3**).

### 3.3. **Determination of satisfaction of Conditions Precedent**

- (a) *AEMO* must determine satisfaction (or otherwise) of each Condition Precedent within 3 Business Days of the later of:
  - (i) the date *AEMO* considers (at *AEMO*'s sole discretion and acting reasonably) that the Service Provider has provided all information relevant to that Condition Precedent to *AEMO*; and
  - (ii) (if relevant to the Condition Precedent) the date the Meter Data Agent provides all relevant Interval Meter data to *AEMO*.
- (b) To avoid doubt, *AEMO* may request further information from the Service Provider at any time for the purposes of **clause 3.3(a)**.
- (c) If *AEMO* determines under **clause 3.3(a)** that the Condition Precedent is satisfied, *AEMO* must set the date of satisfaction as the date when the Condition Precedent was satisfied, as reasonably determined by *AEMO*.



### 3.4. Extension and waiver

Each Condition Precedent is for AEMO's benefit. AEMO (in its sole discretion and acting reasonably) may extend a Condition Precedent Satisfaction Date to a date on or before the Final Condition Precedent Satisfaction Date, or waive the non-satisfaction of a Condition Precedent, by notifying the Service Provider to that effect in writing.

### 3.5. Termination for non-satisfaction of Condition Precedent

AEMO may terminate this Contract if a Condition Precedent is not satisfied by the Condition Precedent Satisfaction Date, and AEMO (in its sole discretion and acting reasonably) does not:

- (a) extend the Condition Precedent Satisfaction Date under **clause 3.3**; or
- (b) waive the non-satisfaction of the Condition Precedent under **clause 3.3**.

### 3.6. Consequences of termination

If AEMO terminates this Contract under **clause 3.5**:

- (a) **clause 10.4** applies with respect to the Security; and
- (b) **clause 13.3** applies with respect to the termination.

### 3.7. Alternative to termination

- (a) AEMO (as an alternative to termination under **clause 3.5**) may, by notice to the Service Provider, reduce the relevant Maximum Service Quantity to a quantity AEMO reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to AEMO, including information provided by the Service Provider in accordance with **Schedule 2. Clause 10.4** applies with respect to the Security to the extent of the proportionate difference between the Maximum Service Quantity and the reduced Maximum Service Quantity.
- (b) If the Maximum Service Quantity is reduced under **clause 3.7(a)**:
  - (i) the Service Provider may, by notice in writing, request AEMO to increase the relevant Maximum Service Quantity to a quantity up to but not exceeding the Maximum Service Quantity specified in the **Contract Details**; and
  - (ii) AEMO must increase the relevant Maximum Service Quantity to a quantity (up to but not exceeding the Maximum Service Quantity specified in the **Contract Details**) that AEMO reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to AEMO.

## 4. Service

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### 4.1. Service obligations

On and from the Commencement Date, the Service Provider must:

- (a) operate and maintain the Registered Service Equipment in accordance with Good Electricity Industry Practice;
- (b) ensure that each *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Registered Service Equipment and for each *Dispatch Interval* in the Service Period includes (except to the extent the Registered Service Equipment is subject to a *Planned Outage* or *Forced Outage* in the *Dispatch Interval*) an offer quantity for *Injection* or *Withdrawal* greater than or equal to the sum of the Maximum Service Quantity and the Baseline Quantity; and
- (c) where the *Reference Scenario* for a *Pre-Dispatch Interval* or *Dispatch Interval* within the Service Period projects that the Registered Service Equipment will be cleared to provide a *Market Service*, ensure that the *Real-Time Market Submissions* for the Registered Service

Equipment for that *Pre-Dispatch Interval* or *Dispatch Interval* includes sufficient capacity as *In-Service Capacity* for energy to allow the Registered Service Equipment to be dispatched for energy between any relevant *Enablement Limits*.

#### 4.2. **Essential System Services**

To avoid doubt, this Contract does not prevent the Service Provider from offering a *Frequency Co-optimised Essential System Service* quantity that includes the Maximum Service Quantity in a *Real-Time Market Submission* or a *Standing Real-Time Market Submission*, provided the Service Provider complies with **clause 4.1**.

#### 4.3. **Information request**

- (a) AEMO (acting reasonably) may request information from the Service Provider's Operational Contact Person regarding the Registered Service Equipment or the Service at any time during the Contract Term.
- (b) The Service Provider must provide requested information without undue delay.

#### 4.4. **Service Period**

The Service Period is each *Dispatch Interval* in each *Electric Storage Resource Obligation Interval*.

#### 4.5. **Material change notification by Service Provider**

The Service Provider must notify AEMO's Operational Contact Person without undue delay if:

- (a) There are any material changes during the Contract Term with respect to:
  - (i) the Registered Service Equipment; or
  - (ii) a Designated Connection Point (including NMI details); or
- (b) an Insolvency Event occurs in relation to the Service Provider.

### 5. **Availability**

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#### 5.1. **Determining Availability**

The Service is taken to be Available in any *Dispatch Interval* during the Service Period (including when subject to a *Planned Outage*) unless it is Unavailable under **clause 5.2** or taken to be Unavailable under **clause 8.4**.

#### 5.2. **Unavailable**

The Service is Unavailable in any *Dispatch Interval* during the Service Period (except to the extent the Registered Service Equipment is subject to a *Planned Outage* in the *Dispatch Interval*) if:

- (a) a Condition Precedent is not satisfied and AEMO (in its sole discretion and acting reasonably) does not waive non-satisfaction of the Condition Precedent under **clause 3.3**;
- (b) the Service Provider's *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Registered Service Equipment and for the *Dispatch Interval* is not in accordance with **clause 4.1(b)** or **clause 4.1(c)**;
- (c) **clause 5.3** applies;
- (d) the Registered Service Equipment is or continues to be subject to a *Forced Outage* in the *Dispatch Interval* that prevents the Registered Service Equipment from providing the Service;
- (e) the Registered Service Equipment is subject to a *Commissioning Test* in the *Dispatch Interval* that does not occur during a *Planned Outage*; or
- (f) (with respect to any difference between a *Dispatch Instruction* quantity and the relevant Maximum Service Quantity for a *Dispatch Interval*) AEMO identifies from available data that the Registered Service Equipment would have been unable to comply with the Service Provider's

*Real-Time Market Submission or Standing Real-Time Market Submission for the Registered Service Equipment for the Dispatch Interval.*

### **5.3. Unavailable – Dispatch Instruction**

Subject to **clause 5.4**, the Registered Service Equipment is Unavailable for the purposes of **clause 5.2** (with respect to the *Dispatch Instruction* for the Registered Service Equipment and the *Dispatch Interval*) if:

- (a) both of the following apply:
  - (iii) the *Dispatch Target* or *Dispatch Cap*, as applicable, is less than or equal to the sum of the Maximum Service Quantity and the Baseline Quantity; and
  - (iv) the Registered Service Equipment is not operating within the applicable *Tolerance Range* or *Facility Tolerance Range* for that *Dispatch Instruction* at the end of the *Dispatch Interval*; or
- (b) both of the following apply:
  - (i) the *Dispatch Target* or *Dispatch Cap*, as applicable, is greater than the sum of the Maximum Service Quantity and the Baseline Quantity; and
  - (ii) the Registered Service Equipment is not operating at a quantity that is greater than or equal to the sum of the Maximum Service Quantity and the Baseline Quantity, allowing for the relevant *Tolerance Range* or *Facility Tolerance Range*, at the end of the *Dispatch Interval*.

### **5.4. Exceptions to clause 5.3 – SWIS Frequency response and Essential System Services**

**Clause 5.3** does not apply to the extent that one or more of the following applies:

- (a) the *SWIS Frequency* is outside the range for the *Frequency Dead Band* as specified in the *Registered Generator Performance Standards* applicable to the Registered Service Equipment) and both of the following apply:
  - (i) the Service Provider complies with the *Registered Generator Performance Standard* applicable to the Registered Service Equipment; and
  - (ii) in AEMO's reasonable opinion, the Registered Service Equipment would otherwise have been Available if the *SWIS Frequency* deviation had not occurred; or
- (b) the Service Provider complies with an *Essential System Service Enablement Quantity* with respect to the Registered Service Equipment.

## **6. Measurement and verification**

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### **6.1. Measurement**

AEMO must use Interval Meter Data, *Facility Sub-Metering* data (where available) or SCADA data (as reasonably determined by AEMO) to determine the MWh quantity of adjusted *Injection* or *Withdrawal* at each Designated Connection Point relative to the Baseline Quantity for each *Dispatch Interval*.

### **6.2. Verification**

AEMO may use Interval Meter Data, *Facility Sub-Metering* data (where available) or SCADA data (as reasonably determined by AEMO) to verify quantities provided under this Contract.

## **7. Modifications to Registered Service Equipment**

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### **7.1. Service Provider Registered Service Equipment**

The Service Provider must notify AEMO promptly after changing or modifying any Registered Service Equipment that it owns operates or controls in a manner that affects or could reasonably be expected to affect its ability to provide the Service.

## 7.2. Third-Party Registered Service Equipment

The Service Provider must use reasonable endeavours to ensure that any third-party with whom the Service Provider enters into a contract or an arrangement for the purposes of providing the Service notifies the Service Provider as soon as any Registered Service Equipment applicable to that third-party is, or will become, incapable of providing the Service.

## 8. Service Test

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### 8.1. Service Test

AEMO may require the Service Provider to carry out a Service Test if the Registered Service Equipment does not operate at a level equal to or greater than the Maximum Service Quantity at any time in a 3-month period.

### 8.2. Service Test process

The Service Test process is as follows:

- (a) AEMO determines 2 consecutive *Trading Intervals* in the Service Period during which the Registered Service Equipment is to be subject to a Service Test;
- (b) AEMO notifies the Service Provider's Operational Contact of the Service Test *Trading Intervals* in writing; and
- (c) the Service Provider updates its *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Registered Service Equipment to include (for the Service Test *Trading Intervals*) a *Price-Quantity Pair as In-Service Capacity*, where the:
  - (i) price equals the *Energy Offer Price Floor*; and
  - (ii) quantity equals the sum of the Baseline Quantity and the Maximum Service Quantity.

### 8.3. Service Test outcome

AEMO must determine the Service Test outcome based on Interval Meter Data, *Facility Sub-Metering* data (where available) or SCADA data (as reasonably determined by AEMO) as follows:

- (a) if (having regard to the matters specified in **clause 5.2**) the relevant data shows that the Service is taken to be Unavailable in either or both of the Service Test *Trading Intervals*, then the Registered Service Equipment fails the Service Test; and
- (b) otherwise, the Registered Service Equipment passes the Service Test.

### 8.4. Deemed Unavailability

If the Registered Service Equipment fails a Service Test, the Service is taken to be Unavailable from the *Trading Interval* in which AEMO reasonably considers the Registered Service Equipment failed the Service Test until the Registered Service Equipment passes a Service Test or AEMO otherwise reasonably considers the Service is Available.

## 9. Payment and settlement

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### 9.1. NCESS Payment

- (a) AEMO must calculate the NCESS Payment for each Settlement Period.
- (b) The NCESS Payment is the sum of the Availability Payments.

### 9.2. Availability Payment

The Availability Payment in a Settlement Period is determined as follows:

$$\text{Availability Payment} = \sum_{t \in D1} AP \times MSQ$$

where:

**AP** is the Availability Price for the relevant *Dispatch Interval* (being the Availability Price in **Schedule 3** converted to \$ per MW per *Dispatch Interval*);

**MSQ** is the Maximum Service Quantity; and

**tEDI** denotes all *Dispatch Intervals* in the Service Period in the Settlement Period (excluding *Dispatch Intervals* when the Service is Unavailable).

### 9.3. Settlement process

Section 9 of the *WEM Rules* applies with respect to NCESS Payments.

### 9.4. GST

Clause 9.1.3 of the *WEM Rules* applies with respect to amounts payable under this Contract.

## 10. Security

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### 10.1. Application

This **clause 10** applies if the **Contract Details** specify that Security is required.

### 10.2. Obligation to provide Security

The Service Provider must ensure that *AEMO* holds the benefit of the Security for the amount specified in the **Contract Details** as amended under **clause 3.7**. The Security must be an obligation in writing that:

- (a) is from a *Security Provider*;
- (b) is a guarantee or bank undertaking in a form prescribed by *AEMO*;
- (c) is duly executed by the *Security Provider* and delivered unconditionally to *AEMO*;
- (d) constitutes valid and binding unsubordinated obligations of the *Security Provider* to pay to *AEMO* amounts in accordance with its terms;
- (e) permits drawings or claims by *AEMO* up to a stated amount;
- (f) has an effective date on or before the date indicated in **Condition Precedent 1**; and
- (g) has an expiry date on or following a date which is 20 *Business Days* after the date that is 2 months after the Final Condition Precedent Satisfaction Date.

### 10.3. Satisfaction of Conditions Precedent

If the Service Provider satisfies each Condition Precedent by the relevant Condition Precedent Satisfaction Date, or *AEMO* waives non-satisfaction of a Condition Precedent under **clause 3.3**, *AEMO* must return the original copy of the Security to the Service Provider within 10 *Business Days*.

### 10.4. Non-satisfaction of Conditions Precedent

- (a) If the Service Provider does not satisfy each Condition Precedent by the relevant Condition Precedent Satisfaction Date, and *AEMO* (in its sole discretion and acting reasonably) does not waive non-satisfaction of a Condition Precedent under **clause 3.3**, then:
  - (i) *AEMO* must notify the Service Provider of that fact; and
  - (ii) the Service Provider must pay to *AEMO*, as compensation to the market, an amount equivalent to the Security (as specified in the **Contract Details** and subject to **clause 3.7(a)**) within 10 *Business Days*.
- (b) The obligation in **clause 10.4(a)(ii)** is satisfied if:
  - (i) the Service Provider pays *AEMO* an amount equivalent to the Security (as specified in the **Contract Details** and subject to **clause 3.7(a)**) in cleared funds within 10 *Business Days* after *AEMO* notifies the Service Provider under **clause 10.4(a)(i)** (in

- which case *AEMO* must promptly return the original copy of the Security to the Service Provider); or
- (ii) (if *AEMO* does not receive a payment under **clause 10.4(b)(i)**) *AEMO* draws on the Security and promptly returns the original copy of the Security to the Service Provider.
  - (c) The payment under **clause 10.4(b)(i)** or the drawdown under **clause 10.4(b)(ii)**, as applicable, is deemed to be a negative *NCESS* amount payable under this Contract for the purposes of clauses 5.9.1 and 9.10.27C of the *WEM Rules*.

## 11. Liability

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### 11.1. *AEMO's* liability cap

- (a) Subject to **clause 11.1(b)**, and other than in respect of any unpaid *NCESS* Payment amounts, the total amount recoverable from *AEMO* in respect of any and all claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with, this Contract is limited to the prescribed maximum amount for the purposes of section 126 of the *Electricity Industry Act* and regulation 52 of the *WEM Regulations*.
- (b) Regardless of the nature of any claim, *AEMO* is not liable in any circumstances for any:
  - (i) damages or losses that are not direct and do not flow naturally from a breach of this Contract, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Contract;
  - (ii) loss of market, opportunity or profit (whether direct or indirect); or
  - (iii) damages or losses to the extent that a claim results from the Service Provider's failure to act in accordance with this Contract, Legislation, or Good Electricity Industry Practice.

### 11.2. Service Provider liability cap

- (a) Subject to **clause 11.2(b)**, and other than in respect of any *NCESS* Payment amounts repayable by the Service Provider under this Contract, the total amount recoverable from the Service Provider in respect of any and all claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with, this Contract is limited to the lesser of the Maximum *NCESS* Contract Amount and \$5 million.
- (b) Regardless of the nature of any claim, the Service Provider is not liable in any circumstances for any:
  - (i) damages or losses that are not direct and do not flow naturally from a breach of this Contract, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Contract;
  - (ii) loss of market, opportunity or profit (whether direct or indirect); or
  - (iii) damages or losses to the extent that a claim results from *AEMO's* failure to act in accordance with this Contract, Legislation, or Good Electricity Industry Practice.

## 12. Force Majeure Event

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- (a) This clause 12 applies if the **Contract Details** specify that a Force Majeure Event may apply for the purposes of this Contract.
- (b) The Service Provider is excused from performance of its obligations under this Contract before the Commencement Date (and is not considered to be in breach of its obligations before the Commencement Date) if and to the extent that:

- (i) the non-performance of its obligations is due to a Force Majeure Event;
  - (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; and
  - (iii) the Service Provider complies with **clause 12(c)**.
- (c) The Service Provider must:
- (i) notify *AEMO* of the Force Majeure Event as soon as practicable;
  - (ii) use reasonable endeavours to overcome or mitigate the Force Majeure Event so as to resume performance of its obligations under this Contract; and
  - (iii) notify *AEMO* immediately after resuming performance of its obligations under this Contract.
- (d) Where *AEMO* considers a Force Majeure Event applies before the Commencement Date, *AEMO* (in its sole discretion and acting reasonably) may extend the End Date and the Final Condition Precedent Satisfaction Date, up to a maximum extension of 2 months, by notifying the Service Provider to that effect in writing.

## 13. Termination

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### 13.1. Termination by *AEMO*

*AEMO* may terminate this Contract by giving notice to the Service Provider if:

- (a) (for any period after the Commencement Date) any of the following applies:
  - (i) as at any given day, the Service has been Unavailable in more than 10% of *Dispatch Intervals* in the Service Period in the preceding 90 days during the Contract Term (excluding any period during which a Force Majeure Event applies);
  - (ii) the Service is Unavailable for a continuous period of more than 30 days during the Contract Term (excluding any period during which a Force Majeure Event applies);
  - (iii) the Service Provider breaches a material term of this Contract and, in the case of a breach that is capable of remedy, does not remedy that breach within 20 *Business Days* (or, if *AEMO* approves a longer period for a specific breach, within that longer period) after *AEMO* notifies the Service Provider of the breach; or
  - (iv) an Insolvency Event occurs in relation to the Service Provider, and the Service Provider does not remedy the Insolvency Event within 20 *Business Days* after the Insolvency Event occurs (or, if *AEMO* approves a longer period for the Insolvency Event, within that longer period).
- (b) A termination notice takes effect on the later of:
  - (i) the time it is given; and
  - (ii) immediately prior to 8.00 am on the *Trading Day* immediately after the date specified in the notice.

### 13.2. No liability for termination

- (a) Subject to **clause 13.2(b)**, *AEMO* is not liable to the Service Provider if it terminates this Contract under this **clause 13**.
- (b) *AEMO* is only liable for NCESS Payments due in accordance with this Contract before 8.00 am on the *Trading Day* immediately after the date specified in the termination notice.

### 13.3. Consequences of termination

Subject to **clause 13.2(b)**, expiry or termination of this Contract for any reason does not affect any rights of either party against the other party that:

- (a) arose prior to the time at which expiry or termination occurred; and

- (b) otherwise relate to or may arise at any future date from any breach of this Contract occurring prior to the expiry or termination.

#### 13.4. Reduction of Maximum Service Quantity

- (a) *AEMO* (acting reasonably and as an alternative to termination) may, by notice to the Service Provider, reduce the relevant Maximum Service Quantity to a quantity *AEMO* reasonably expects the Service Provider to be capable of providing having regard to the Service Provider's historical performance under this Contract.
- (b) If the Maximum Service Quantity is reduced under **clause 13.4(a)**:
  - (i) the Service Provider may, by notice in writing, request *AEMO* to increase the relevant Maximum Service Quantity to a quantity up to but not exceeding the Maximum Service Quantity specified in the **Contract Details**; and
  - (ii) *AEMO* must increase the relevant Maximum Service Quantity to a quantity (up to but not exceeding the Maximum Service Quantity specified in the **Contract Details**) that *AEMO* reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to *AEMO*.

### 14. Dispute resolution

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#### 14.1. *WEM Rules* dispute process

Subject to **clause 14.2**, the dispute process set out in sections 2.18, 2.19, 2.20, 9.16 and 9.17 of the *WEM Rules* applies to any dispute arising under this Contract.

#### 14.2. General dispute resolution procedure

- (a) This **clause 14** does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.
- (b) Unless otherwise agreed, the parties must continue to perform their obligations under this Contract despite the existence of a dispute.

### 15. Representations and warranties

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The Service Provider represents and warrants to *AEMO* as at the Commencement Date and at all times during the Contract Term that (to the best of its knowledge and belief):

- (a) the Service Provider's obligations under this Contract are valid and binding and enforceable in accordance with their terms;
- (b) the Service Provider has in full force and effect all contracts, authorisations, licences, permits, consents, certificates, authorities and approvals necessary to enter into this Contract, to perform its obligations under this Contract and to allow those obligations to be enforced;
- (c) the Service Provider is not in default under Legislation affecting it or its respective assets, or any obligation or undertaking by which it or any of its assets are bound which will or might reasonably be expected to, materially affect its ability to perform the obligations under this Contract;
- (d) there is no pending or threatened action or proceeding affecting the Service Provider or any of its respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract; and
- (e) the Service Provider does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).



## 16. General

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### 16.1. Notices

- (a) Subject to **clause 16.1(b)** and **Schedule 6**, all communications to a party must be:
- (i) in writing;
  - (ii) marked to the attention of the person named in respect of that party in the **Contract Details**; and
  - (iii) left at, sent by ordinary pre-paid post (airmail if posted to or from a place outside Australia), or in electronic form, to the address, number, or electronic mail address of the addressee specified in respect of that party in the **Contract Details**.
- (b) Subject to the *WEM Rules*, any:
- (i) communications given in the course of the day-to-day running of the *Wholesale Electricity Market* by or on behalf of a party to the other;
  - (ii) notifications regarding Availability of the Service by the Service Provider in accordance with this Contract,
- must be made by email (or automated electronic process) or telephone as notified by *AEMO*.
- (c) Unless communications under **clause 16.1(b)** are recorded in some other way satisfactory to and with the consent of both parties, the parties must ensure that logs are kept in which persons or electronic systems giving and receiving those communications record brief details of their substance and timing.
- (d) Unless a later time is specified in it, a communication takes effect from the time it is received.
- (e) A communication is taken to be received:
- (i) in the case of a posted letter, 5 *Business Days* after posting;
  - (ii) in the case of an electronic message, on production of a report by the computer from which the electronic message was sent that indicates that the message was received in its entirety at the electronic mail address of the recipient; and
  - (iii) in the case of a communication under **clause 16.1(b)**, when the communication is received.
- (f) Other than communications given under **clause 16.1(b)**, if a communication is received, or deemed to be received, on a day that is not a *Business Day*, or after 4:00pm AWST on a *Business Day*, it is taken to be received on the next *Business Day*.
- (g) A party may at any time by notice given to the other party in writing designate a different person, address, telephone number or electronic mail address for the purposes of **clause 16.1**, the **Contract Details** and **Schedule 6**.

### 16.2. Exercise of Rights

Subject to the express provisions of this Contract, a party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

### 16.3. Waiver of Rights

A right may only be waived in writing, signed by the party giving the waiver and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right, or otherwise prevents the exercise of the right;

- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

**16.4. Assignment or other dealing**

- (a) The Service Provider must not assign or otherwise deal with its rights or obligations under this Contract or (except in the ordinary course of business) in respect of the Registered Service Equipment without *AEMO*'s written consent.
- (b) *AEMO* must not unreasonably withhold or delay its consent under **clause 16.4(a)**.
- (c) *AEMO* (as a condition of consent under **clause 16.4(a)**) may require the Service Provider and the third-party to enter into a deed of novation with *AEMO* on terms that are reasonably satisfactory to *AEMO* under which the third-party agrees to assume obligations that are substantially equivalent to the Service Provider's obligations under this Contract.
- (d) Any purported assignment in breach of this **clause 16.4** is invalid and of no legal effect.

**16.5. Amendment and variation**

- (a) Unless otherwise stated in this Contract, this Contract may be varied:
  - (i) by agreement of the parties as recorded in writing and signed by the parties; or
  - (ii) by agreement under **clause 16.5(b)**.
- (b) If any Legislation (including the *WEM Rules*) is amended (**Change in Law**) and, in a party's reasonable opinion, the amendment will affect this Contract or the performance of obligations under this Contract:
  - (i) the party may, by notice in writing to the other party, request relevant amendments to this Contract that are reasonably required to address the Change in Law; and
  - (ii) both parties must act reasonably and in good faith to agree on any amendments to this Contract required to address the impact of the Change in Law on this Contract or the performance of obligations under this Contract.

**16.6. Costs and expenses**

Except as otherwise agreed by the parties in writing or stated in this Contract, each party must pay its own costs in relation to preparing, negotiating and executing this Contract and any document related to this Contract.

**16.7. Further assurances**

Each party agrees, at its own expense, on the request of the other party to:

- (a) promptly do everything reasonably necessary to give effect to this Contract and the transactions contemplated by it (including the execution of documents); and
- (b) use reasonable endeavours to cause relevant third parties to do likewise if necessary or desirable.

**16.8. Supervening legislation**

Subject to **clause 16.5(b)**, any present or future Legislation that operates to vary an obligation or right, power or remedy of a person in connection with this Contract is excluded to the extent permitted by law.

**16.9. Severability**

If a provision or part of a provision of this Contract is void, unenforceable, invalid or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Contract remains effective and the validity or enforceability of that provision in any other jurisdiction is not affected. This **clause 16.9** has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.

#### **16.10. Entire agreement**

- (a) Subject to the *WEM Rules*, this Contract constitutes the entire agreement of the parties in connection with provision of the Service and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.
- (b) For the avoidance of doubt, this Contract contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by the other party, or by a director, officer, agent or employee of that party, before this Contract was executed, save as permitted by law.

#### **16.11. Confidential information**

- (a) The Service Provider consents to the use or disclosure of its confidential information by *AEMO* to the extent reasonably necessary for *AEMO* to carry out its functions, or comply with its obligations, under the *WEM Regulations* and the *WEM Rules*.
- (b) This **clause 16.11** survives termination (for whatever reason) of this Contract.

#### **16.12. No other representations or warranties**

Each party acknowledges that, in entering into this Contract, it has not relied on any representations or warranties about its subject matter except as provided in this Contract.

#### **16.13. Counterparts**

This Contract may consist of a number of identical copies, each signed by one or more parties to this Contract. If so, the signed copies make up one document and the date of this Contract will be the date on which the last counterpart was signed. The counterparts may be executed and delivered by email or other electronic signature by one or more of the parties and the receiving party or parties may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

#### **16.14. Governing law and jurisdiction**

This Contract and the transactions contemplated by it are governed by the laws in force in Western Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place. The parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **16.15. No partnership, agency or trust**

Nothing contained or implied in this Contract constitutes or may be deemed to constitute that a party is the partner, agent or representative of any other party for any purpose whatsoever, or creates or may be deemed to create any partnership or creates or may be deemed to create any agency or trust.

#### **16.16. No authority to act**

Neither party has any power or authority to act for or to assume any obligation or responsibility on behalf of the other party, to bind the other party to any agreement, negotiate or enter into any binding relationship for or on behalf of the other party or pledge the credit of the other party except as specifically provided in this Contract or by express agreement between the parties.



## Schedule 1 – Conditions Precedent

No	Condition Precedent	Condition Precedent Satisfaction Date
1.	The Service Provider provides the Security to AEMO.	1 November 2024
2.	The Registered Service Equipment is registered as a <b>Semi-Scheduled/Scheduled</b> Facility under clause 2.29 of the WEM Rules.	##
3.	If the Registered Service Equipment is an <i>Electric Storage Resource</i> that forms a component of a <i>Semi-Scheduled Facility</i> or a <i>Scheduled Facility</i> , the Service Provider must install <i>Facility Sub-Metering</i> for the <i>Electric Storage Resource</i> in accordance with the requirements specified in the <i>WEM Procedure</i> referred to in clause 2.29.15 of the <i>WEM Rules</i> .	##
4.	With respect to the Registered Service Equipment, the Service Provider is granted, for a quantity greater than or equal to the sum of the Maximum Service Quantity and the Baseline Quantity:  (a) an <i>Interim Approval to Generate Notification</i> or <i>Approval to Generate Notification</i> ; or  (b) for <i>Transmission Connected Generating Systems</i> with an <i>Arrangement for Access</i> executed prior to 1 February 2021, an interim or final approval to operate provided by the <i>Network Operator</i> .	##
5.	If the Registered Service Equipment is a <b>New Facility</b> (as specified in the <b>Contract Details</b> ) or requires a major modification to provide the Service, the Service Provider completes a <i>Commissioning Test</i> for the Registered Service Equipment in accordance with clause 3.21A of the <i>WEM Rules</i> . To avoid doubt, if the Registered Service Equipment completes more than one <i>Commissioning Test</i> , this Condition Precedent is deemed to be satisfied when the Registered Service Equipment completes the first <i>Commissioning Test</i> .	##
6.	The Service Provider demonstrates (at its own cost and based on <i>Interval Meter Data</i> or <i>Facility Sub-Metering</i> data, as applicable, for any period on or after 1 June 2025) that the Registered Service Equipment is capable of increasing <i>Injection</i> or reducing <i>Withdrawal</i> , as applicable, by a quantity greater or equal to the relevant Maximum Service Quantity (relative to the Baseline Quantity) for 48 consecutive <i>Dispatch Intervals</i> during the relevant Service Period.	##

## Schedule 2 – Progress Report

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The Service Provider must provide the following information (with supporting evidence) at least every 3 months from the date of this Contract until the Commencement Date (or termination under **clause 3.5** if applicable):

- (a) when all approvals will be finalised;
- (b) when financing will be finalised;
- (c) when site preparation will begin;
- (d) when construction will commence;
- (e) when equipment will be installed and when all required control equipment will be in place;
- (f) when the Registered Service Equipment, or part of the Registered Service Equipment, will be ready to undertake *Commissioning Tests*; and
- (g) when the Registered Service Equipment, or part of the Registered Service Equipment, will have completed all *Commissioning Tests*.

## Schedule 3 – Service

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(a) **Registered Service Equipment, Designated Connection Point and Baseline Quantity**

Registered Service Equipment	##
Designated Connection Point (NMI or description of connection point)	##

(b) **Availability Price**

Availability Price (\$ per MW per year)	###
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## Schedule 4 – Baseline Quantity

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The Baseline Quantity is:

- (a) for a *Non-Intermittent Generating System* or an *Electric Storage Resource*, is the maximum of:
  - (i) zero MW;
  - (ii) either:
    - (A) the MW quantity of *Capacity Credits* held by the Registered Service Equipment for the 2025-26 *Capacity Year*, or
    - (B) if the MW quantity of *Capacity Credits* held by the Registered Service Equipment for the 2025-26 *Capacity Year* is 0 MW, the MW quantity of *Capacity Credits* (0 MW or otherwise) held by the Registered Service Equipment for the 2024-25 *Capacity Year*; and
  - (iii) the sum of the Baseline Quantity and the Maximum Service Quantity (both in MW) specified in an *NCESS Contract* for an equivalent service relating to the Registered Service Equipment and the 2024-25 *Capacity Year* (if any); and
- (b) otherwise, a MW quantity determined by *AEMO* acting reasonably, using an appropriate methodology.



## Schedule 5 – NCESS Payment and *Capacity Credit* payments

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This **Schedule 5** applies if clause 5.3.1 of the *WEM Rules* requires *AEMO* to amend the NCESS Payment to account for expected *Capacity Credit* payments.

*AEMO* must complete the following steps to determine the amended Availability Price in *Capacity Year y*.

### Step 1:

The amended availability price in *Capacity Year y* (in \$ per *MW* per year) is:

$$\text{Availability Price}_y = \frac{(\text{AP} \times \text{MSQ}) + (\text{SEC}_y - \text{CC}_y) \times \text{RCP}_y}{\text{MSQ}}$$

where:

**AP** (in \$ per *MW* per year) is the availability price specified in **Schedule 3**;

**CC<sub>y</sub>** is the quantity of *Capacity Credits* assigned to the Registered Service Equipment for *Capacity Year y*;

**MSQ** is the Maximum Service Quantity;

**RCP<sub>y</sub>** is the *Reserve Capacity Price* for *Capacity Year y*; and

**SEC<sub>y</sub>** represents the Registered Service Equipment's capacity that is not related to the Maximum Service Quantity for *Capacity Year y*, as calculated in accordance with the following formula.

$$\text{SEC}_y = \max(0, \text{CC}_y - \text{BQ} - \text{MSQ}) + \text{BQ}$$

where:

**BQ** is the Baseline Quantity;

**CC<sub>y</sub>** is the quantity of *Capacity Credits* assigned to the Registered Service Equipment for *Capacity Year y*;

**MSQ** is the Maximum Service Quantity.

### Step 2:

If the result of step 1 is less than zero, the amended availability price in *Capacity Year y* (in \$ per *MW* per year) is zero.

If the result of step 1 is greater than the availability price specified in **Schedule 3**, the amended availability price for *Capacity Year y* (in \$ per *MW* per year) is the availability price specified in **Schedule 3**.

## Schedule 6 – Operational Contact Persons

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(a) **AEMO's Operational Contact Person**

Name/Title	WA Market Operations and Support
Telephone No	1300 989 797
Email	wa.operations@aemo.com.au

(b) **Service Provider's Operational Contact Person**

**Primary Contact Person**

Name/Title	##
Telephone No	##
Email	##

**Backup Contact Person**

Name/Title	##
Telephone No	##
Email	##